

Paul Julien, Chair
Committee on Civil Rules of Procedure for
Limited Jurisdiction Courts
1501 W. Washington St.
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT JUSTICE COURT)
RULES OF CIVIL PROCEDURE)

) Supreme Court No. R-12-0006

) Reply re: Amended Rule Petition

_____)

1. Purpose: Administrative Order 2011-13 established the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (referred to as “RCiP.LJC”) in furtherance of Goal One of the Arizona Supreme Court’s Justice 20/20 Strategic Agenda: Strengthening the Administration of Justice. As stated in Section 1B of the Strategic Agenda, “*Simplifying and Enhancing Systems:*”

“The legal system can be intimidating and its complexity can make navigation difficult for victims, witnesses, and litigants not represented by counsel. Simplifying the rules for less complex cases and streamlining case management processes can help make court proceedings understandable and should result in greater public trust and confidence in the system.”

The “*Action Plan*” for this goal includes “*Streamline case processing by... developing separate, simplified rules for civil cases in justice courts.*” Administrative Order 2011-13 noted that a number of the superior court rules might not apply to civil cases in justice court, or may be unnecessarily complicated for justice court cases.¹

2. Background: RCiP.LJC’s membership includes a judge of the superior court, four justices of the peace, and a justice court manager. The members also include three attorneys who practice in justice court (two collection attorneys and one consumer advocate), representatives from three legal aid organizations, the chair of the State Bar’s Civil Practice and Procedure Committee, the former co-chair of the State Bar’s Landlord-Tenant Task Force, and a member of the public. To assure statewide diversity, the Committee members came from five counties (Cochise, Coconino, Maricopa, Mohave, and Pima). Petitioner is the chair of RCiP.LJC and the Judicial Education Officer of the Administrative Office of the Courts (“AOC”).

RCiP.LJC had eight five-hour meetings in 2011, and Committee workgroups met for six lengthy sessions. The members formally agreed to recommend adoption of a separate set of rules for justice court civil actions, rather

¹ A.R.S. § 22-211 provides: “*The law governing procedure and practice in the superior court so far as applicable and when not otherwise specifically prescribed, shall govern procedure and practice in justice of the peace courts.*”

than amendments to the existing superior court rules. Throughout their meetings, particular issues recurred: Would simplifying the rules sacrifice functionality? Could the rules be sufficiently straightforward for those who appear in court without a lawyer, yet also include procedures used by practicing attorneys? Should traditional legal terms such as “*pleadings*,” “*service*,” and “*discovery*” be used in the rules? Could the new justice court rules link to case law precedent developed under the superior court rules? The members believe that the proposed rules provide reasonable and effective solutions for these issues.

RCiP.LJC presented its report and a draft of the proposed rules to the Arizona Judicial Council (“*AJC*”); the AJC approved the report on December 15, 2011. On January 6, 2012, Petitioner filed this rule petition seeking the adoption of Justice Court Rules of Civil Procedure (referred to as the “*JCRCP*”). The Court’s Order of January 13, 2012 provided a “*staggered*” comment period for this rule petition. RCiP.LJC met twice following the initial comment period, and on April 26, 2012, Petitioner filed an amended rule petition with a revised version of the proposed rules. The second comment period closed on May 29, 2012, and RCiP.LJC re-convened on June 1, 2012, to discuss the additional comments.

3. Specific issues: RCiP.LJC welcomed comments. Formal and informal comments received before and during the comment periods raised a variety of issues, but Petitioner specifically notes the four that follow.

A. Will self-represented litigants read the justice court rules? Some commentators suggested that justice court rules should be no longer than one page. Others suggested that self-represented litigants would not even read a single page. However, some self-represented litigants will read the proposed rules, and those who do should find the justice court rules considerably more comprehensible than the superior court rules. One legal aid member of RCiP.LJC commented that we should not underestimate the ability of many self-represented litigants to use information when presented to them in an organized and straightforward manner. Self-represented litigants are required to participate in the process, and that presupposes reading a pleading, a disclosure statement, a notice or order from the court, or applicable court rules. Nonetheless, the Committee anticipates that some self-represented litigants will not read any rules. Accordingly, the proposed rules require service of a one-page “*notice to defendant*” with a summons. (See Rules 112(d) and 148(b).) This notice is similar to a residential eviction information sheet served on a tenant under the Rules of Procedure for Eviction Actions. The “*notice to defendant*” will provide many litigants with useful details about responding to the complaint, about where to get help, and about their rights and responsibilities in a justice court lawsuit.

B. Are the justice court rules “simple?” The William E. Morris Institute for Justice (the “*Morris Institute*”) observed in a formal comment filed on May 29,

2012, that the proposed rules “*are written at a tenth grade reading level,*” and it contends that RCiP.LJC fell short of the charge in A.O. 2011-13 to “*simplify*” court processes and to make the rules “*more comprehensible to everyone.*” The comment noted, “*Some sentences [of the JCRCP] have 50 plus words.*”

The proposed rules may not be “*simple.*” They are not enhanced small claims rules, nor are they superior court rules “*lite.*” RCiP.LJC intended to provide a set of justice court rules with functionality comparable to the superior court rules, but which greatly “*simplify*” those rules. If a JCRCP sentence has fifty words, then a corresponding sentence in the superior court rules likely contains considerably more words. If the JCRCP is at the tenth grade reading level, then the superior court rules are at an even higher level. RCiP.LJC meticulously reviewed every superior court rule and simplified, i.e., restyled, text by using more comprehensible language, revising sentence structure, eliminating redundancy, avoiding legal jargon, utilizing consistent style and format, and defining dozens of necessary legal terms.² As one illustration of simplification, JCRCP Rule 107(b) reduced 130 technical words of superior court Rule 8(e) to just eight words of plain English.

² On the subject of simplification, RCiP.LJC appreciates the superlative guidance provided in articles written by Joseph Kimble, the drafting consultant for the project to restyle the Federal Rules of Civil Procedure, including “[Lessons in Drafting from the New Federal Rules of Civil Procedure,](#)” *The Scribes Journal of Legal Writing*, 2008-2009, at page 25.

The page limit of this reply precludes Petitioner from providing innumerable other examples of “*simplifying*” the rules.

While shortening the rules is not the overarching criteria, Petitioner believes that the JCRCP, excluding the forms and appendices, is about one-fifth the length of the Ariz. R. Civ. P. The proposed rules could be even shorter, but some of the strongest advocates for more, rather than fewer, provisions in the rules were the legal aid attorneys on RCiP.LJC. They believed, quite correctly, that these rules must provide due process protections. The rules accordingly require extra descriptive text to specify these protections. The “*notice to defendant*” described above is one of these protections. In addition:

- RCiP.LJC concluded that discovery notices (notices of depositions, service of interrogatories, or requests for production or admissions) should inform recipients about their duties and rights in responding to the discovery request, and the possible consequences of failing to respond. These details are included in the rules.
- Because an unanswered request for admission can be dispositive of a case, the rules include a requirement that in the event a party who received the request fails to timely respond, that party will have an additional “*grace period*” for providing a response, similar to a grace period in a default proceeding.

- The rule on motions requires a notice at the beginning of any motion that advises the other party of their right to file a response, and the consequences of not responding to the motion. The JCRCP rule on summary judgment motions requires information in this notice about what needs to be included in the response.
- The members were unsure if the superior court rules require mailing of a motion for entry of a default judgment to the defaulting defendant. The JCRCP clarified that mailing is indeed required, and the rule provides other and additional protections to a defendant in default.

C. Do the rules provide enough protections for debtors? Consumer debt cases represent a large percentage of justice court civil actions, and RCiP.LJC spent considerable time discussing consumer debt issues. For a debtor's benefit, proposed Rule 110(b)(2) requires that a complaint identify the original owner of an assigned debt. Many consumer protections contained within the JCRCP, such as the notices described above, enjoyed broad support from the full spectrum of the members. On the other hand, RCiP.LJC members forged certain rules concerning pleading and disclosure requirements in consumer debt cases from hard-fought compromises.

The Morris Institute's formal comment reiterated points its representative had previously made at State Bar meetings, several of which RCiP.LJC members

attended, and RCiP.LJC repeatedly considered the subjects of the Morris Institute's recommendations on consumer debt items. For example, the draft minutes of the June 1, 2012 RCiP.LJC meeting includes the following:

“Rule 110(b) concerns the content of a complaint. This comment [from the Morris Institute] recommended adding additional requirements for a complaint in a consumer debt case. The comment requested that the rule require allegations in the complaint of the redacted account number, date of last payment, and date of default. The comment also requested that the name of the original creditor not only be in the body of the complaint, as the draft rules currently provide, but that it also appear in the caption of the complaint. As to the latter recommendation, the consensus of the members was that this might suggest that the original creditor was a party to the lawsuit, but if the original creditor has sold the debt, the original creditor is no longer a party. As to the former recommendation, the members noted that their workgroup considered these matters, after which the workgroup reached a compromise; and the matters were also discussed extensively by the full committee previously and after Ms. Katz’ prior recommendations to the State Bar.

*“**Motion:** A member made a motion of appreciation of Ms. Katz’ comment, but that RCiP.LJC would abide by its previous compromises on these issues. The motion received a second and it passed unanimously. **RCiP.LJC 12-034**”³*

³ The members also concluded that there is no universal agreement on the meaning of the date of default (for example, *Navy Federal Credit Union v Jones*, 187 Ariz. 493, Division Two, 1996), a subject on which there is federal law; and the Morris Institute's proposal to include this date might add to rather than reduce issues in debt collection litigation. In addition, RCiP.LJC believed that Arizona legislative decisions rather than rules of procedure might govern substantive requirements in this area. Coincidentally, HB 2664, relating to credit card agreements, was approved by the Governor on May 9, 2012. The members considered this legislation, including the manner of proof that is specified in A.R.S. § 44-7804, at their June 1 meeting, but concluded that the legislation did not require amendments or revisions to the JCRCP.

Another recommendation from the Morris Institute proposed adding to Rule 140 specific determinations that a judge must make before entering a default judgment in a consumer debt case. These specified determinations would require the judge to assure that service of process was proper, that a proper foundation exists for documentary evidence and affidavits, and that the plaintiff's proof is sufficient to support the claimed amount. RCiP.LJC members presumed that a judge already does these things. A judge member added that he already modifies the terms of a proposed judgment if it is not appropriate in light of the offered proof, and that he would do this in any case, and not just in a consumer debt case. Another member suggested that the Committee not adopt the proposal because it essentially tells a judge to follow the existing law. The Committee accordingly passed a motion not to adopt this recommendation.

D. Why does the JCRCP use a different numbering system than the superior court rules? The sequence of the superior court rules has historical roots, and although the roots may not be readily apparent, law-trained individuals can locate a particular rule without difficulty. The same may not be true for self-represented litigants with no legal training who may be looking for a specific rule within a presumably logical table of contents. As just a few examples of the sequence of the superior court rules:

- Rule 4 concerning the summons and Rules 4.1 and 4.2 regarding service of a summons appear before Rules 8 through 11 concerning an initial pleading, but is a pleading not prepared before issuance and service of a summons? Rule 7.1 concerning a motion appears before rules on a complaint, but doesn't a complaint precede a motion?
- Should not rules concerning the same subjects (e.g., response times under Rule 12(a) and Rule 4.2(m); or about entry of judgment under Rule 54 and Rule 58) be consolidated or grouped together?
- Why are rules regarding trials found throughout the Ariz. R. Civ. P. rather than in a single unit? See Rule 7.2 ("*motions in limine*"), Rule 16 ("*pretrial conferences*"), and Rules 38 through 52 (concerning trials).

Re-sequencing the proposed rules allows a more logical arrangement. In addition, a number of superior court rules do not apply in justice court, and excluding those rules would have resulted in gaps in numbering.⁴ In lieu of renumbering, the members considered using the superior court numbering with

⁴ Excluded, for examples, are Rules 2 (one form of action), 23 (class actions), 31 (depositions upon written questions), 40 (assignment of cases for trial), 44 (proof [sic] records, determination of foreign law), 46 (exceptions unnecessary), 53 (masters), 57 (declaratory judgments), 65 (injunctions), 66 (receivers), 72 through 77 (arbitration), 78 and 79 (both abrogated), and 83 (local rules by superior courts). Gaps would also result from the deletion of medical malpractice and complex civil litigation rules as well as inapplicable sections of other rules.

notations advising the reader that certain rules are inapplicable in justice court, but they concluded that this might be perplexing for self-represented litigants. RCiP.LJC believes it is most helpful for stakeholders to open the JCRCP to pages 4-5, and to view all 48 of the justice court rules laid out in the table of contents in the sequence that events occur in litigation.

JCRCP Rule 101(d) expressly provides for the application of Arizona appellate decisions that have interpreted corresponding superior court rules. Brackets immediately after the text of a section of a justice court rule contain the number of the corresponding superior court rule(s).⁵ For example, JCRCP Rule 129 concerns summary judgment, and brackets after each section of Rule 129 show applicable provisions of Ariz. R. Civ. P. Rule 56. Because Rule 129 and Rule 56 are corresponding rules, case law such as *Orme School v Reeves* will continue to apply in justice court. These references should assist justice court judges and litigants in locating and applying case law that is relevant to a justice court rule, notwithstanding the new numbering scheme of these proposed rules.

⁵ The proposed justice court rules also include a detailed table in the appendix that contains cross-references to the Ariz. R. Civ. P. The JCRCP is not the only set of Arizona rules to deviate from the numbering scheme of the Rules of Civil Procedure; the Arizona Rules of Family Law Procedure also use different numbering.

4. Comments received during the second comment period:

A. *State Bar of Arizona:* RCiP.LJC adopted many recommendations the State Bar made during the first comment period, and Petitioner is gratified that the State Bar's May 18, 2012 comment "*...now fully supports the Amended Rule Petition....*" Petitioner acknowledges and appreciates the hours that the State Bar devoted to reviewing and discussing this rule petition.

B. *Judge Segal:* Judge Segal personally presented the substance of her comment at the June 1 RCiP.LJC meeting, prior to filing her formal comment. However, her presentation at the June 1 meeting proposed statewide mandatory mediation, whereas her formal comment proposed a standardized but non-mandatory process.

JCRCP Rule 130 already allows mediation analogous to Judge Segal's proposal, but mediation under Rule 130 is optional rather than mandatory. RCiP.LJC had previously agreed to optional rather than mandatory mediation because of differences in available resources and case management practices in individual justice court precincts. For instance, Judge Segal's proposal envisions that the court will schedule mediation within forty-five days of an answer. Requiring the clerk to docket every case for mediation within forty-five days of the answer might pose logistical challenges for some precincts, or might overwhelm the availability of mediators. Some judges prefer to set a case for mediation only

after conducting a pretrial conference, or only after the parties request mediation. Other precincts might not have fiscal resources for mediation, and the proposal could create an unfunded mandate. Mediation in a case where the defendant admits liability for a debt but an inability to make payment might serve to delay rather than to expedite disposition.

Accordingly, at the June 1 meeting, the members expressed appreciation for Judge Segal's presentation, but retained the optional mediation provision in Rule 130. The members recommend that the Court establish a separate committee to consider Judge Segal's proposal, or refer it to a standing committee.

C. Morris Institute: At its June 1 meeting, RCiP.LJC adopted three Morris Institute recommendations regarding the summons form (JCRCF Appendix, form 1). These changes to the summons: (1) include brief advice about the availability of a fee waiver or deferral; (2) provide notice that there is an additional fee for using AZ TurboCourt to prepare an answer; and (3) modify the time period that a person with a disability can request reasonable accommodations to "*as soon as possible*" before a hearing.

5. RCiP.LJC changes after the second comment period: The members also made changes to the draft rules on their initiative. They added a new Rule 147(d) concerning service of an order to show cause. Rule 133(b) was modified to allow a demand for a jury "*at any time before trial*" to make the rule compatible

with A.R.S. § 22-220. Provisions concerning a change of judge previously consolidated in Rule 133(c) with a change of venue are now in a separate Rule 133(d), and there is a new provision for transfer of a lawsuit filed in an improper venue.

6. Conclusion: Petitioner appreciates the outstanding work of the members of RCiP.LJC. While not every Committee vote was unanimous, the members completed this task with remarkable consensus. Petitioner notes that the Committee submitted to this Court a single report and set of rules; there are no “*minority*” versions.

The JCRCP offers to self-represented litigants and to other justice court stakeholders the advantages of ease-of-use, comprehensibility, and fairness beyond what the superior court rules currently provide. Petitioner nevertheless understands that the rules are still not perfect. Petitioner acknowledges that further rule revisions, forms, or guidebooks may be required after the Court adopts the rules, which would improve the rules or would provide additional assistance to users. Petitioner therefore requests adoption of the rules, and an extension of RCiP.LJC’s term for one year after the effective date of these rules to accomplish these desired objectives.

RESPECTFULLY SUBMITTED this 26th day of June, 2012

By /s/ _____
Paul Julien, Chair
Committee on Civil Rules of Procedure for
Limited Jurisdiction Courts
1501 W. Washington Street
Phoenix, AZ 85007

Copy e-mailed on the date of filing to:

Hon. Gerald Williams
Hon. David Widmaier
Hon. Steven McMurry
John Furlong
Steven Itkin
Kenneth Seidberg
Brian Partridge
Hon. Anne Segal
David Hameroff
James Vaughan
Jennifer Nix
Sarah De La Rosa
Ellen Sue Katz